IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.04.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.698 of 1995

Palaniammal

... Appellant/Plaintiff.

Vs.

1. Kuppuswamy
2. Chinnakkutty @ Kandasamy
3. Natesan
4. Dr.Palaniappan
5. V.Chinna Gounder
6. Marayee
7. Chinnapappa @ Palaniammal
8. Velakutty @ Kandaswamy
9. Dr.Palanivelu
10. Easwaran @ Palanisamy

... Respondents/Defendants.

PRAYER: Second Appeal under Section 100 CPC against the Judgment and decree dated 24.09.1993 passed by the subordinate Judge, Sankari in A.S.No.14 of 1992 on his file, on appeal from the judgement and decree dated 19.10.1989 passed by the District Munsif, Sankari in O.S.No.6 of 1988.

For Petitioner : Mr.S.Jayaraman for
Mr.S.P.Subramanian

For Respondents : Mr.K.Raman Raj for
R.M.Krishnaraj

J U D G M E N T

The unsuccessful plaintiff in both the courts below is the appellant in the second appeal. The suit filed for declaration and permanent injunction in respect of the suit property and also for a permanent injunction from the user of the customary pathway leading to the common water tap in Oore natham from the house of the plaintiff.

2. The case of the plaintiff is that being the eldest daughter, her father Kandasamy Gounder alias Kandappa Gounder has executed two settlement deeds in her favour on 09.05.1979 and 11.10.1979 marked as Exs.A1 and A2 which are the suit properties out of which Ex.A.1 relates to

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the A Schedule and A2 relates to B Schedule property and ever since the date of execution the plaintiff is in possession. The suit properties are comprised in Survey No.72/2 which are item Nos.1 and 2 in A Schedule and Survey No.72/2B in B Schedule. Thereafter by two rectification deeds marked as Ex.A.3 and A.4 dated 20.12.1979, the father of the plaintiff has executed rectification in respect of the Survey number of the suit property. The plaintiff's case is that her forefathers have prescribed title by adverse possession by being in possession from 1905 onwards.

3. According to the plaintiff a suit was filed by one Ponnayee alias Pavayee and her son against Vaiyapuri Gounder and another in O.S.No.809 of 1960 before the District Munsiff Court, Sangari, Salem District for partition. The land measuring to the extent of 2.49 acres in Survey No.72/2 now renumbered as 72/2A referred as A Schedule property therein and land to the extent of 2.37 acres comprised in Survey No.72/2B referred to as B Schedule property therein were allotted to the respective parties to the suit. However, in respect of Survey No.72/2C to the extent of 10 cents 72/2D in respect of 0.22 cents and Survey No.72/2E in respect of 0.59 cents were not subject matter under the said decree marked as Ex.A.8.

4. The plaintiff's case is that it is only through the said mamool pathway the water is being taken to the plaintiff's property which was obstructed by the defendants and therefore, the suit was filed.

5. On the other hand, the defendant's case is that in respect of Survey No.72/2 the plaintiffs has no right at all and all the properties belong to the parties to the earlier suit in O.S.No.809 of 1960 and therefore, the plaintiff and her father have never had perfected title in respect of CDE portion by adverse possession. It is also the defendant's case that they have purchased the property under a sale deed dated 07.11.1979 marked as Exs.B1 and B2 from Pavala Gounder and others. The case of the plaintiff was that the defendants are bound by Ex.A9 muchalika dated 04.10.1964 entered in the presence of Panchayat apart from the Commissioner's report Ex.A.10 and A.11 dated 13.11.1964 marked in the said O.S.No.809 of 1960 and they cannot claim more than what was given under the said documents.

6. On the analysis of entire evidence the Trial Court has well as the First Appellate Court have found that CDE properties in O.S.No.809 of 1960 belonged to the defendants and the plaintiffs have not proved their case of adverse possession and dismissed the suit. It was as against the concurrent finding by both the courts below the present second appeal was filed. While admitting the second appeal this Court has framed the following substantial question of law:

> "1. Whether the finding of the courts below that the plaintiff/appellant has no title to the suit property, on the ground that she had not filed documents of title relating thereto, ignoring the fact that the suit is in natham is

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correct in law?

2. Whether the conclusion of the lower court that the plaintiff/appellant has no title to the suit property is correct in law, when the property is shown as the western boundary of the properties sold to D1 and D2 under Ex.B.1 and B.2 and is described as belonging to the appellant and others?"

7. A reference to the judgement of both the courts below show that the plaintiff who has come to the court on the plea of adverse possession, has not proved her claim and held on factual appreciation of Ex.A.8 decree passed in O.S.No.809 of 1960 along with Exs.B.1 and B.2 sale deed relied upon by the defendants to come to the conclusion that the defendants are entitled as per the sale deeds in respect of CDE portion of 72/2 and also having found that when in respect of the property an Advocate Commissioner was appointed in O.S.No.809 of 1960 if actually the plaintiff was in possession she would have been made as a party and even at that time when the Advocate Commissioner visited and inspected and submitted his report marked as Ex.A.10 and A.11, there is nothing mentioned about the possession of the plaintiff in any portion of the property and the courts below have factually found that as per Ex.B.1 and B.2 sale deeds the defendants are entitled to the property and in view of the above said factual finding by both courts below, there is no substantial question of law involved in this case.

8. In view of the same the Second Appeal fails and the same is dismissed with costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nbj

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To
1. The Subordinate Judge, Sankari.

2. The District Munsif, Sankari.

3.The Section Officer, VR Section,
High Court, Madras.

+ 1 CC To Mr. SP.Subramanian, Advocate SR NO.21386

+ 1 CC To Mr. R.M.Krishnaraju, Advocate SR NO.21362

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